

Introduced by Senator Romero

February 16, 2005

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An act to amend ~~Section 10209~~ *Sections 10200, 10201, 10205, and 10209* of the Unemployment Insurance Code, relating to employment training.

LEGISLATIVE COUNSEL'S DIGEST

SB 314, as amended, Romero. Job training.

Under existing law, the Employment Training Panel has specified duties, including the duty to make contracts for training in job-related vocational skills, as specified.

~~This bill would make a technical, nonsubstantive change to those provisions~~ *authorize the panel to make contracts for training in job-related vocational skills to increase the productivity and extended retention of workers in the state's major seasonal industries and would establish a payment schedule for those contracts. The bill would also make technical, nonsubstantive changes to existing law.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 10200 of the Unemployment Insurance*
- 2 *Code is amended to read:*
- 3 10200. The Legislature finds and declares the following:
- 4 (a) California's economy is being challenged by competition
- 5 from other states and overseas. In order to meet this challenge,
- 6 California's employers, workers, labor organizations, and
- 7 government need to invest in a skilled and productive workforce,

1 and in developing the skills of frontline workers. For purposes of  
2 this section, “frontline worker” means a worker who directly  
3 produces or delivers goods or services.

4 The purpose of this chapter is to establish a strategically  
5 designed employment training program to promote a healthy  
6 labor market in a growing, competitive economy that shall fund  
7 only projects that meet the following criteria:

8 (1) Foster creation of high-wage, high-skilled jobs, or foster  
9 retention of high-wage, high-skilled jobs in manufacturing and  
10 other industries that are threatened by out-of-state and global  
11 competition, including, but not limited to, those industries in  
12 which targeted training resources for California’s small and  
13 medium-sized business suppliers will increase the state’s  
14 competitiveness to secure federal, private sector, and other  
15 nonstate funds. Provide for retraining contracts in companies that  
16 make a monetary or in-kind contribution to the funded training  
17 enhancements.

18 (2) Encourage industry-based investment in human resources  
19 development that promotes the competitiveness of California  
20 industry through productivity and product quality enhancements.

21 (3) Result in secure jobs for those who successfully complete  
22 training. All training shall be customized to the specific  
23 requirements of one or more employers or a discrete industry and  
24 shall include general skills that trainees can use in the future.

25 (4) *Increase the productivity and efficiency of the state’s*  
26 *major seasonal industries and strengthen their ability to compete*  
27 *in the national and international marketplaces by improving the*  
28 *skills of their workforces.*

29 (5) Supplement, rather than displace, funds available through  
30 existing programs conducted by employers and  
31 government-funded training programs, such as the Workforce  
32 Investment Act of 1998, the Carl D. Perkins Vocational  
33 Education Act, CalWORKs, the Enterprise Zone Act, and the  
34 Stewart B. McKinney Homeless Assistance Act, the California  
35 Community Colleges Economic Development Program, or  
36 apportionment funds allocated to the community colleges,  
37 regional occupational centers and programs, or other local  
38 educational agencies. In addition, it is further the intention of the  
39 Legislature that programs developed pursuant to this chapter

1 shall not replace, parallel, supplant, compete with, or duplicate in  
2 any way already existing approved apprenticeship programs.

3 (b) The Employment Training Panel, in funding projects that  
4 meet the requirements of subdivision (a), shall give funding  
5 priority to those projects that best meet the following goals:

6 (1) Result in the growth of the California economy by  
7 stimulating exports from the state, and the production of goods  
8 and services that would otherwise be imported from outside the  
9 state.

10 (2) Train new employees of firms locating or expanding in the  
11 state that provide high-skilled, high-wage jobs and are committed  
12 to an ongoing investment in the training of frontline workers.

13 (3) Develop workers with skills that prepare them for the  
14 challenges of a high performance workplace of the future.

15 (4) Train workers who have been displaced, have received  
16 notification of impending layoff, or are subject to displacement,  
17 because of a plant closure, workforce reduction, changes in  
18 technology, or significantly increasing levels of international and  
19 out-of-state competition.

20 (5) Are jointly developed by business management and worker  
21 representatives.

22 (6) Develop career ladders for workers.

23 (7) Promote the retention and expansion of the state's  
24 manufacturing workforce.

25 (c) The program established through this chapter is to be  
26 coordinated with all existing employment training programs and  
27 economic development programs, including, but not limited to,  
28 programs such as the Workforce Investment Act of 1998, the  
29 California Community Colleges, the regional occupational  
30 programs, vocational education programs, joint  
31 labor-management training programs, and related programs  
32 under the Employment Development Department and the  
33 Business, Transportation and Housing Agency.

34 *SEC. 2. Section 10201 of the Unemployment Insurance Code*  
35 *is amended to read:*

36 10201. As used in this chapter:

37 (a) "Department" means the Employment Development  
38 Department.

39 (b) "Employer" or "eligible employer" means any employer  
40 subject to Part 1 (commencing with Section 100) of Division 1,

1 except any public entity, or any nonprofit organization which has  
2 elected an alternate method of financing its liability for  
3 unemployment insurance compensation benefits pursuant to  
4 Article 5 (commencing with Section 801), or Article 6  
5 (commencing with Section 821) of Chapter 3.

6 Any public entity or nonprofit organization that has elected an  
7 alternate method of financing its liability for unemployment  
8 insurance compensation benefits pursuant to Article 5  
9 (commencing with Section 801), or Article 6 (commencing with  
10 Section 821) of Chapter 3, shall be deemed to be an employer  
11 only for purposes of placement of new hire trainees who received  
12 training as an incidental part of a training project designed to  
13 meet the needs of one or more private sector employers.

14 (c) “Eligible participant” means any person who, prior to  
15 beginning training or employment pursuant to this chapter, is any  
16 of the following:

17 (1) Unemployed and has established an unemployment  
18 insurance claim in this state, or has exhausted eligibility for  
19 unemployment insurance benefits from this state within the  
20 previous 24 months.

21 (2) Employed for a minimum of 90 days by his or her  
22 employer, or if employed for less than 90 days, met the  
23 conditions of paragraph (1) at the time of hire, had received a  
24 notice of layoff from the prior employer, or was employed by an  
25 employer for a period of not less than 90 days during the 180-day  
26 period prior to the employee’s current employment.

27 (d) “Executive director” means the executive director  
28 appointed pursuant to Section 10202.

29 (e) “Fund” means the Employment Training Fund created by  
30 Section 1610.

31 (f) “Job” means employment on a basis customarily  
32 considered full time *or full time seasonal* for the occupation and  
33 industry. The employment shall have definite career potential and  
34 a substantial likelihood of providing long-term job security.  
35 Furthermore, the employment shall provide earnings, upon  
36 completion of the employment requirement specified in  
37 subdivision (f) of Section 10209, equal to 50 percent, in the case  
38 of new hire training, or 60 percent, in the case of retraining, of  
39 the state or regional average hourly wage, *except workers*  
40 *retained by a seasonal employer*. However, *except for workers*

1 *retained by a seasonal employer, who shall receive earnings at a*  
2 *rate not less than the industry standard, in no case shall the*  
3 *employment result in earnings of less than 45 percent of the state*  
4 *average hourly wage for new hire training and 55 percent of the*  
5 *state average hourly wage for retraining. The panel may consider*  
6 *the dollar value of health benefits that are voluntarily paid for by*  
7 *an employer when computing earnings to meet the minimum*  
8 *wage requirements.*

9 (g) “New hire training” means employment training, including  
10 job-related literacy training, for persons who, at the start of  
11 training, are unemployed.

12 (h) “Panel” means the Employment Training Panel created by  
13 Section 10202.

14 (i) “Retraining” means employment related skill and literacy  
15 training for persons who are employed and who meet the  
16 definition of paragraph (2) of subdivision (c) prior to  
17 commencement of training and will continue to be employed by  
18 the same employer for at least 90 days following completion of  
19 training *or, for persons retained by a seasonal employer, at least*  
20 *500 hours in the 12 months immediately following the completion*  
21 *of training.*

22 (j) “Seasonal employer” means an employer in an industry  
23 that competes in the national or international marketplace,  
24 whose workforce is comprised of at least 50 percent of workers  
25 whose employment period is necessarily cyclical and is directly  
26 related to the harvesting, packing, processing, or transportation  
27 of goods or products, who has retained at least 50 percent of the  
28 same seasonal employees for at least one season of not less than  
29 500 hours for the preceding 12-month period, and who pays  
30 wages and provides benefits that exceed industry averages.

31 (k) “Seasonal worker training agency” means a trade  
32 association or business primarily engaged in training workers in  
33 a seasonal industry that meets all of the requirements of Section  
34 10210, and has provided vocational, educational, and workplace  
35 leadership training for workers of seasonal employers for at least  
36 five years.

37 (l) “State average hourly wage” means the average weekly  
38 wage paid by employers to employees covered by unemployment  
39 insurance, as reported to the Employment Development

1 Department for the four calendar quarters ending June 30 of the  
2 preceding calendar year, divided by 40 hours.

3 ~~(k)~~

4 (m) “Trainee” means an eligible participant.

5 ~~(l)~~

6 (n) “Training agency” means any private training entity or  
7 local educational agency.

8 *SEC. 3. Section 10205 of the Unemployment Insurance Code*  
9 *is amended to read:*

10 10205. The panel shall do all of the following:

11 (a) Establish a three-year plan that shall be updated annually,  
12 based on the demand of employers for trained workers, changes  
13 in the state’s economy and labor markets, and continuous  
14 reviews of the effectiveness of panel training contracts. The  
15 initial three-year plan shall be submitted to the Governor and the  
16 Legislature not later than January 1, 1994. The initial update of  
17 the plan shall be submitted not later than July 1, 1994, and annual  
18 updates of the plan thereafter shall be submitted not later than  
19 July 1 of each year. In carrying out this section, the panel shall  
20 review information in the following areas:

21 (1) Labor market information, including the state-local labor  
22 market information program in the Employment Development  
23 Department, and economic forecasts.

24 (2) Evaluations of the effectiveness of training as measured by  
25 increased security of employment for workers and benefits to the  
26 California economy.

27 (3) The demand for training by industry, type of training, and  
28 size of employer.

29 (4) Changes in skills necessary to perform jobs, including  
30 changes in basic literacy skills.

31 (5) Changes in the demographics of the labor force and the  
32 population entering the labor market.

33 (6) Proposed expenditures by other agencies of federal  
34 Workforce Investment Act funds and other state and federal  
35 training and vocational education funds on eligible participants.

36 (b) Maintain a system to continuously monitor economic and  
37 other data required under this plan. If this data changes  
38 significantly during the life of the plan, the plan shall be  
39 amended by the panel. Each plan shall include all of the  
40 following:

1 (1) The panel's objectives with respect to the criteria and  
2 priorities specified in Section 10200 and the distribution of funds  
3 between new-hire training and retraining.

4 (2) The identification of specific industries, production and  
5 quality control techniques, and regions of the state where  
6 employment training funds would most benefit the state's  
7 economy and plans to encourage training in these areas,  
8 including specific standards and a system for expedited review of  
9 proposals that meet the standards.

10 (3) A system for expedited review of proposals that are  
11 substantially similar with respect to employer needs, training  
12 curriculum, duration of training, and costs of training, in order to  
13 encourage the development of proposals that meet the needs  
14 identified in paragraph (2).

15 (4) The panel's goals, operational objectives, and strategies to  
16 meet the needs of small businesses, including, but not limited to,  
17 those small businesses with 100 or fewer employees. These  
18 strategies proposed by the panel may include, but not be limited  
19 to, pilot demonstration projects designed to identify potential  
20 barriers that small businesses may experience in accessing panel  
21 programs and workforce training resources, including barriers  
22 that may exist within small businesses.

23 (5) The research objectives of the panel that contribute to the  
24 effectiveness of this chapter in ~~benefiting~~ *benefitting* the  
25 economy of the state as a whole.

26 (6) A priority list of skills that are in such short supply that  
27 employers are choosing to not locate or expand their businesses  
28 in the state or are importing labor in response to these skills  
29 shortages.

30 (c) Solicit proposals and write contracts on the basis of  
31 proposals made directly to it. Contracts for the purpose of  
32 providing employment training may be written with any of the  
33 following:

34 (1) An employer or group of employers.

35 (2) A training agency.

36 (3) A local workforce investment board with the approval of  
37 the appropriate local elected officials in the local workforce  
38 investment area.

39 (4) A grant recipient or administrative entity selected pursuant  
40 to the federal Workforce Investment Act of 1998, with the

1 approval of the local workforce investment board and the  
2 appropriate local elected officials.

3 These contracts shall be in the form of fixed-fee performance  
4 contracts. Notwithstanding any provision of law to the contrary,  
5 contracts entered into pursuant to this chapter shall not be subject  
6 to competitive bidding procedures. Contracts for training may be  
7 written for a period not to exceed 24 months for the purpose of  
8 administration by the panel and the contracting employer or any  
9 group of employers acting jointly or any training agency for the  
10 purpose of providing employment training.

11 (d) Fund training projects that best meet the priorities  
12 identified annually. In doing so, the panel shall seek to facilitate  
13 the employment of the maximum number of eligible participants.

14 (e) Establish minimum standards for the consideration of  
15 proposals, which shall include, but not be limited to, the  
16 identification of employers who have been contacted by the  
17 contractor and who have provided reasonable assurance that they  
18 will employ successful trainees, the number of jobs available, the  
19 skill requirements for the identified jobs, the projected cost per  
20 person trained, hired, and retained in employment, the wages  
21 paid successful trainees upon placement, and the curriculum for  
22 the training. No proposal shall be considered or approved that  
23 proposes training for employment covered by a collective  
24 bargaining agreement unless the signatory labor organization  
25 agrees in writing.

26 (f) Develop a process by which local workforce investment  
27 boards may apply for marketing resources for the purpose of  
28 identifying local employers that have training needs that reflect  
29 the priorities of the panel. The panel may delegate its authority to  
30 approve contracts for training to local workforce investment  
31 boards, provided that no contract approved exceeds fifty  
32 thousand dollars (\$50,000) per project without prior approval of  
33 the panel and all contracts meet the provisions of this chapter and  
34 are consistent with the annual priorities identified by the panel.

35 (g) Ensure the provision of adequate fiscal and accounting  
36 controls for, monitoring and auditing of, and other appropriate  
37 technical and administrative assistance to, projects funded by this  
38 chapter.

39 (h) Provide for evaluation of projects funded by this chapter.  
40 The evaluations shall assess the effectiveness of training



1 previously funded by the panel to improve job security and  
2 stability for workers, and benefit participating employers and the  
3 state's economy, and shall compare the wages of trainees in the  
4 12-month period prior to training as well as the 12-month period  
5 subsequent to completion of training, as reflected in the  
6 department's unemployment insurance tax records. *Projects*  
7 *involving seasonal employers may be evaluated based upon a*  
8 *training period of up to 18 months and a comparative wage*  
9 *assessment period of up to 24 months after the completion of*  
10 *training or two employment seasons, whichever is longer.*

11 Individual project evaluations shall contain a summary  
12 description of the project, the number of persons entering  
13 training, the number of persons completing training, the number  
14 of persons employed at the end of the project, the number of  
15 persons still employed three months after the end of the project,  
16 the wages paid, the total costs of the project, and the total  
17 reimbursement received from the Employment Training Fund.

18 (i) Report annually to the Legislature, by November 30, on  
19 projects operating during the previous state fiscal year. These  
20 annual reports shall provide separate summaries of all of the  
21 following:

22 (1) Projects completed during the year, including their  
23 individual and aggregate performance and cost.

24 (2) Projects not completed during the year, briefly describing  
25 each project and identifying approved contract amounts by  
26 contract and for this category as a whole, and identifying any  
27 projects in which funds are expected to be disencumbered.

28 (3) Projects terminated prior to completion and the reasons for  
29 the termination.

30 (4) A description of the amount, type, and effectiveness of  
31 literacy training funded by the panel.

32 (5) Results of complete project evaluations.

33 (6) A description of pilot projects, and the strategies that were  
34 identified through these projects, to increase access by small  
35 businesses to panel training contracts.

36 (7) A listing of training projects that were funded in high  
37 unemployment areas and a detailed description of the policies  
38 and procedures that were used to designate geographic regions  
39 and municipalities as high unemployment areas.

1 In addition, based upon its experience in administering job  
2 training projects, the panel shall include in these reports policy  
3 recommendations concerning the impact of job training and the  
4 panel's program on economic development, labor-management  
5 relations, employment security, and other related issues.

6 (j) Conduct ongoing reviews of panel policies with the goal of  
7 developing an improved process for developing, funding, and  
8 implementing panel contracts as described in this chapter.

9 (k) Expedite the processing of contracts for firms considering  
10 locating or expanding businesses in the state, in accordance with  
11 the priorities for employment training programs set forth in  
12 subdivision (b) of Section 10200.

13 (l) Coordinate and consult regularly with business groups and  
14 labor organizations, the California Workforce Investment Board,  
15 the State Department of Education, the office of the Chancellor  
16 of the California Community Colleges, and the Employment  
17 Development Department.

18 (m) Adopt by regulation procedures for the conduct of panel  
19 business, including the scheduling and conduct of meetings, the  
20 review of proposals, the disclosure of contacts between panel  
21 members and parties at interest concerning particular proposals,  
22 contracts or cases before the panel or its staff, the awarding of  
23 contracts, the administration of contracts, and the payment of  
24 amounts due to contractors. All decisions by the panel shall be  
25 made by resolution of the panel and any adverse decision shall  
26 include a statement of the reason for the decision.

27 (n) Adopt regulations and procedures providing reasonable  
28 confidentiality for the proprietary information of employers  
29 seeking training funds from the panel if the public disclosure of  
30 that information would result in an unfair competitive  
31 disadvantage to the employer supplying the information. The  
32 panel may not withhold information from the public regarding its  
33 operations, procedures, and decisions that would otherwise be  
34 subject to disclosure under the California Public Records Act  
35 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
36 Title 1 of the Government Code).

37 (o) Review and comment on the budget and performance of  
38 any program, project, or activity funded by the panel utilizing  
39 funds collected pursuant to Section 976.6.

1     ~~SECTION 1.~~

2     ~~SEC. 4.~~ Section 10209 of the Unemployment Insurance Code  
3 is amended to read:

4     10209. (a) Contracts shall only be made for training in  
5 job-related vocational skills that are necessary for participants to  
6 attain a new job or retain an existing job with definite career  
7 potential and long-term job security, *or for increased*  
8 *productivity and extended retention of workers in the state's*  
9 *major seasonal industries.* The contracts for vocational skills  
10 training may include ancillary training for job-related basic and  
11 literacy skills training if the panel finds that the training is  
12 necessary to achieve the objectives of the vocational training *or*  
13 *to improve the productivity or skills of persons employed by*  
14 *seasonal employers.*

15     (b) Contracts for projects involving on-the-job training shall  
16 specify the specific skills and competencies to be gained as a  
17 result of the on-the-job training component of the project.

18     (c) The panel shall not approve any training proposal that  
19 facilitates the change in ownership of a business leading to the  
20 likelihood that an existing collective bargaining agreement would  
21 be declared void.

22     (d) To encourage a broad and equitable distribution of funds,  
23 the panel may require an employer who has previously received  
24 funds pursuant to this chapter for retraining of workers at a  
25 facility to contribute proportionately more to the cost of training  
26 in subsequent panel contracts for training of workers at the same  
27 facility.

28     (e) The panel may delegate to the executive director the  
29 authority to approve training contracts of up to one hundred  
30 thousand dollars (\$100,000), provided the contracts meet the  
31 requirements of this chapter and the policies established by the  
32 panel, and provided that the panel regularly reviews the actions  
33 taken by the executive director pursuant to this subdivision.

34     (f) Payments shall be made in accordance with a performance  
35 contract under which partial payments may be made during  
36 training, a partial payment may be made on placement or  
37 retention of each trainee, and not less than 25 percent of the  
38 negotiated fee is withheld until the trainee has been retained in  
39 employment for 90 days after the end of training with a single  
40 employer, except for *persons employed by seasonal employers*

1 *and* those occupations in which it is not customary for a worker  
2 to be employed 90 consecutive days with a single employer. In  
3 these latter cases, the panel may substitute a period similar to the  
4 probationary period customary to the occupation. The  
5 probationary period shall not be less than 500 work hours and  
6 shall be completed within 272 days of the completion of the  
7 training. In no case shall any payment be considered to have been  
8 earned until the trainee has been retained in employment for 90  
9 days or the equivalent probationary period for an occupation in  
10 which it is not customary for a worker to be employed 90  
11 consecutive days with a single employer.

12 (g) Contracts for new hire training shall require the contractor  
13 to provide the placement services necessary to ensure the trainees  
14 are placed in jobs for which they have been trained.

15 (h) *Notwithstanding subdivision (f), payments for contracts*  
16 *with a seasonal worker training agency or seasonal employers*  
17 *shall be made as follows:*

18 (1) *Fifteen percent shall be paid when the contract has been*  
19 *signed by all parties.*

20 (2) *Thirty-five percent shall be paid at the outset of the*  
21 *training period.*

22 (3) *Twenty-five percent shall be paid upon the completion of*  
23 *the training period.*

24 (4) *Twenty-five percent shall be paid after a worker has*  
25 *completed the training and been retained by a seasonal employer*  
26 *for at least 250 hours in a six-month period, 375 hours in a*  
27 *nine-month period, or 500 hours in a 12-month period,*  
28 *whichever occurs first.*